APPEAL NO. 161636
FILED NOVEMBER 14, 2016

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on April 13, 2016, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that the appellant/cross-respondent (claimant) reached maximum medical improvement (MMI) on June 17, 2015, with an 8% impairment rating (IR) as certified on June 23, 2016, by (Dr. S), appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) as designated doctor.

The claimant appealed the hearing officer's decision arguing the same is contrary to the great weight and preponderance of the evidence and urging adoption of Dr. S's certification dated July 23, 2015, finding that the claimant reached MMI on June 17, 2015, with a 22% (IR).

The respondent/cross-appellant (self-insured) appealed the hearing officer's decision noting that, in fact, Dr. S's Report of Medical Evaluation (DWC-69) and attached narrative report assigned an IR of 7% rather than 8% and requesting correction of typographical errors in the hearing officer's decision and order.

DECISION

Affirmed in part and reversed and rendered in part.

The claimant was injured on (date of injury), while performing her duties as a police officer for the self-insured when she injured her left thumb attempting to apprehend a suspect. The parties stipulated that the claimant sustained a compensable injury in the form of a left thumb posterior lateral dislocation of the proximal first phalanx, scarring and partial tear of the A2 pulley, dystonia of the APL, EPL and BR tendons due to conversion episode and residual obstruction deformity.

MMI

The hearing officer's determination that the claimant reached MMI on June 17, 2015, is supported by sufficient evidence and is affirmed.

IR

Section 408.123(a) provides that after an employee has been certified by a doctor as having reached MMI, the certifying doctor shall evaluate the condition of the employee and assign an IR. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3))

provides that the assignment of an IR for the current compensable injury shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination.

Dr. S examined the claimant on July 23, 2015, and certified that the claimant reached MMI statutorily on June 5, 2015, with a 22% IR. In response to a request for clarification from the Division advising that the correct date of statutory MMI was June 17, 2015, Dr. S amended his previous certification and determined that the claimant reached MMI on June 17, 2015, with a 22% IR.

Following the CCH, on June 8, 2016, the hearing officer sent another request for clarification to Dr. S noting that it appeared his range of motion (ROM) measurements of the thumb IP yielded a 3% IR rather than the 2% IR Dr. S had assigned and further asking that Dr. S explain why his assignment of an IR for both ROM loss and loss of grip strength was appropriate under the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides).

In his response to the hearing officer's request for clarification dated June 23, 2016, Dr. S acknowledged that the IP motion IR should have been 3% and further stated that the assigned ROM impairment adequately addressed the claimant's grip weakness. Dr. S submitted another DWC-69 certifying MMI on June 17, 2015, and assigning a 7% whole person IR based on the claimant's left thumb ROM measurements as follows: 50° IP flexion for a 2% thumb impairment and 0° IP extension for a 1% thumb impairment; 40° MP flexion for a 2% thumb impairment and -40° MP extension for a 5% thumb impairment; 6 cm loss of abduction for an 8% thumb IR; radial abduction angle of 40° for a 1% thumb IR; and 4 cm measured opposition for a 9% thumb IR. Dr. S's thumb motion impairment values total a thumb IR of 28% which converts to an 11% hand IR using Table 1, page 3/18 of the AMA Guides; a 10% upper extremity impairment using Table 2, page 3/19; and finally a whole person IR of 7% using Table 3, page 3/20.

In the Discussion section of her decision, the hearing officer stated that the preponderance of the other medical evidence in the case is not contrary to Dr. S's amended certification of MMI and assignment of IR issued in response to the hearing officer's request for clarification. Furthermore, in Finding of Fact No. 4, the hearing officer stated:

The June 17, 2015, date of [MMI] and 8% [IR] certified by the designated doctor is not contrary to the preponderance of the other medical evidence.

The hearing officer's finding that the certification of MMI and IR by Dr. S was not overcome by the preponderance of the other medical evidence in the case is supported by sufficient evidence; however, as noted by the self-insured in its appeal, the hearing officer mistakenly stated throughout her decision and order that Dr. S's assigned IR was 8% rather than 7% as actually assigned by Dr. S in his DWC-69 and narrative report. We therefore reverse the hearing officer's decision that the claimant's IR is 8%, and render a new decision that the claimant's IR is 7%.

SUMMARY

We affirm the hearing officer's determination that the claimant reached MMI on June 17, 2015.

We reverse the hearing officer's determination that the claimant's IR is 8% and render a new decision that the claimant's IR is 7%.

The true corporate name of the insurance carrier is **CITY OF EL PASO, (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

MAYOR OF THE CITY OF EL PASO
300 NORTH CAMPBELL STREET
EL PASO, TEXAS 79901.

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K. Eugene Kraft
Appeals Judge

CONCUR:

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Carisa Space-Beam
Appeals Judge

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Margaret L. Turner

Appeals Judge